

## REMARKS

The Office Action mailed February 22, 2010, has been received and reviewed. Claims 1-25 are currently pending in the application. Claim 23 was allowed. Claims 1-22, 24 and 25 stand rejected. Applicant has amended no claims and respectfully requests reconsideration of the application as presented herein. No new matter has been added.

**35 U.S.C. § 103(a) Obviousness Rejections**

Obviousness Rejection Based on NPL XP-001017264, EP 0658014 and U.S. Patent No. 6,112,101

Claims 1-4, 6-10, 12-16, 18-20, 24 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over NPL XP-001017264 to Siwko ("Siwko") in view of European Patent Applicant No. EP 0658014 to Redden *et al.* ("Redden") and further in view of U.S. Patent No. 6,112,101 to Bhatia *et al.* ("Bhatia").

To establish a *prima facie* case of obviousness ***the prior art reference (or references when combined) must teach or suggest all the claim limitations.*** *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, there must be "a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicants' disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

The 35 U.S.C. § 103(a) obviousness rejections of claims 1-4, 6-10, 12-16, 18-20, 24 and 25 are improper because the elements for a *prima facie* case of obviousness are not met. Specifically, the rejection fails to meet the criterion that the prior art reference must teach or

suggest all the claims limitations.

Regarding independent claim 1 and claims 2-4, 6 and 7 depending therefrom, independent claim 8 and claims 9, 10, 12 and 13 depending therefrom, independent claim 14 and claims 15, 16 and 18 depending therefrom, independent claim 19 and claim 20 depending therefrom and independent claims 24 and 25, Applicant's independent claims 1, 8, 14, 19, 24 and 25 include claim limitations not taught or suggested in the cited references.

In the Response to Arguments section of the Office Action, the Examiner acknowledges Applicant's position that "Siwko teaches mobile station as **not** being part of Siwko network" and that the Siwko document provided in the IDS only contains pages 1150-1155 while Applicant provides support for Siwko's teachings of mobile stations not being part of Siwko's system, but that the Examiner will consider the arguments if supported by the mentioned pages. (Office Action, p. 2). Applicant acknowledges that IEEE has published slightly varied versions of an identically titled and identically authored document in different IEEE publications. Applicant herein relies upon the page numbering of the version cited on pages 1150-1155. Nevertheless, Applicant's position regarding the teachings of Siwko remains, namely, *Siwko does not teach or suggest giving adjustment control to a mobile station*, and further as amended herein, none of the references teach adjustment *based on a value determined within the mobile station*, as claimed by Applicant.

Applicant's amended independent claims 1, 8, 14, 19, 24 and 25 each recite, *inter alia*, "receiving at a mobile station/an apparatus an initial call request block probability ... and *adjusting at the mobile station/the apparatus* said initial call request block probability *based on* said elapsed time *determined within [the mobile station/the apparatus]*." In contrast, neither Siwko nor Redden nor Bhatia teach or suggest giving *adjustment control to a mobile station based on something "determined within the mobile station."*

Regarding Siwko, Siwko generally teaches of mobile stations freely generating unrestrained call requests and then the network access controller chooses which ones to admit or reject. Specifically, the Office Action states:

*Siwko discloses* that the receiving and adjusting occur at network element [note that *network element can be any element connected to the network, including the mobile device*] .... (Office Action, p. 5; emphasis added).

The Office Action improperly concludes that the “network”, as taught by Siwko, is inclusive of the “mobile device.” Siwko clearly teaches counter to this unsupported allegation. Applicant respects the Examiner’s position but provides the following quotations from Siwko to support the position that *Siwko does not teach or suggest giving adjustment control to a mobile station based on a value determined within the mobile station* as claimed by Applicant.

**Regarding support that Siwko teaches mobile stations as not being part of Siwko’s “network”,** Siwko specifically discloses:

*Call requests arrive at the system* according to a Poisson point process. (Siwko, p. 1151, col. 1, lns 42-44; emphasis added).

The *network resources* available to serve other, lower priority *users* will decrease .... (Siwko, p. 1150, col. 2, lns. 8-9; emphasis added).

*CAC policies protect a network* from overloading *by determining whether incoming call requests* should be accepted or rejected. (Siwko, p. 1150, col. 2, lns. 18-20; emphasis added).

Consider a ... *network serving a class of // calls* subject to variations in the amount of resources available to serve the class. (Siwko, p. 1151, col. 1, lns 32-35; emphasis added).

Applicant respectfully notes that Siwko uses the term “network” at the beginning of the reference and then interchangeably uses the term “system” for “network” mid-way into the reference. Clearly, Siwko’s teachings above *unquestionably* support a “network/system” apart from “users” and initiators of “calls” (e.g., “mobile stations”) since the “users” and initiators of “calls” generate “calls” that are “incoming” to the “network/system.” Accordingly, Siwko does **not** teach that “mobile stations” are part of the “network.”

Therefore, according to Siwko, all of the “receiving” and “adjusting” occur at the network and **not** at the “the mobile station/the apparatus” as claimed by Applicant. Accordingly, the rejection is improper and must be withdrawn since the Office Action has improperly characterized the teachings of Siwko.

**Regarding Redden,** the Office Action states:

Redden discloses *receiving at a mobile station and an initial call request block probability* .... (Office Action, p. 4; emphasis added).

Furthermore, Redden teaches:

FIG. 9 illustrates procedure 300 *performed by* a communication node (for example,

*satellite* 12 of FIG. 1) ..., the communication node [e.g., satellite] receives a parameter set from the communication system ... task 304 [performed in the satellite] modifies the parameter set ... [t]ask 314 [satellite] broadcasts the parameter set on at least one of the broadcast channels .... (Redden, p. 14, lines 4-19; emphasis added).

According to Redden, all of the “receiving” happens at either the satellite or at the mobile stations **after** the modifications have occurred while **all** of the “adjusting” happens either in the “communication node (e.g., satellite)” or the “communication system”. The Office Action in the Response to Arguments states:

As to applicant argument that Redden all the receiving happens at either the satellite or at the mobile station, it is noted that same portion cited by applicant shows that ***communication node broadcast the parameter to the mobile station, thereby updating and adjusting at the mobile station.*** (Office Action, p. 2; emphasis added).

Applicant has amended independent claim 1, 8, 14, 19, 24 and 25 to preclude the interpretation of the teachings in Redden as alleged in the Office Action. Specifically, Applicant’s amended independent claims 1, 8, 14, 19, 24 and 25 each recite, *inter alia*, “**adjusting at the mobile station/the apparatus** said initial call request block probability **based on** said elapsed time **determined within [the mobile station/the apparatus].**” Clearly Applicant’s adjustment at the mobile station/apparatus based on something (e.g., elapsed time) “**determined within [the mobile station/the apparatus]**” precludes an interpretation of the teachings of Redden wherein adjustments are made based upon something ***received*** at the mobile station, as alleged in the Office Action.

**Regarding Bhatia**, the Office Action introduces Bhatia and states:

Bhatia discloses a mobile device that receives a broadcast message which identify when the mobile station blocks a call request by foregoing origination of the call request (see col. 2, lines 38-53; col. 4, lines 34-41). Therefore, it would have been ***obvious*** to one of the ordinary skills in the art at the time of the invention ***to combine these teachings*** to let the mobile station know when it is possible to transmit and make a call, without the need of the mobile station transmit when the wireless resources are not present, thereby efficiently managing the finite wireless resources. (Office Action, p. 5; emphasis added).

Applicant respectfully disagrees. Applicant respectfully points out that Bhatia teaches

that the mobile station *monitors a broadcast of a current priority* (i.e., an indicator identifying a subscription level) of a group of mobile stations being serviced by the network *and then* the mobile station *compares the broadcast current priority with a stored priority in the mobile station* to determine if the mobile station is permitted to access the network. (Bhatia, col. 4, lns. 34-41). However, Bhatia, like Siwco and Redden, fails to teach “receiving at a mobile station/an apparatus an initial call request block probability ...and *adjusting at the mobile station/the apparatus* said initial call request block probability *based on* said elapsed time *determined within [the mobile station/the apparatus]*” as claimed by Applicant in independent claims 1, 8, 14, 19, 24 and 25.

Therefore, since Siwko, Redden and Bhatia, either individually or in any proper combination do not teach or suggest all of Applicant’s claim elements, these references cannot render obvious, under 35 U.S.C. §103, Applicant’s invention as presently claimed in Applicant’s independent claims 1, 8, 14, 19, 24 and 25 which each recite, *inter alia*, “receiving at a mobile station/an apparatus an initial call request block probability ...and *adjusting at the mobile station/the apparatus* said initial call request block probability *based on* said elapsed time *determined within [the mobile station/the apparatus]*.” Accordingly, Applicant respectfully requests the rejection of independent claims 1, 8, 14, 19, 24 and 25 be withdrawn.

The nonobviousness of independent claims 1, 8, 14 and 19 preclude rejection of claims 2-4, 6, 7, 9, 10, 12, 13, 15, 16, 18 and 20 which variously depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claims 1, 8, 14 and 19 and claims 2-4, 6, 7, 9, 10, 12, 13, 15, 16, 18 and 20 which variously depend therefrom.

#### Obviousness Rejection Based on Siwko, Redden, Bhatia and U.S. Patent No. 4,493,102

Claims 5, 11 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Siwko in view of Redden and Bhatia and further in view of U.S. Patent No. 4,493,102 to Weishaupt (“Weishaupt”).

The nonobviousness of independent claims 1, 8 and 14 preclude rejection of claims 5, 11

and 17 which respectively depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claims 1, 8 and 14 and claims 5, 11 and 17 which respectively depend therefrom.

#### Obviousness Rejection Based on Redden, Siwko and Bhatia

Claims 21 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Redden in view of Siwko and further in view of Bhatia.

To establish a *prima facie* case of obviousness *the prior art reference (or references when combined) must teach or suggest all the claim limitations*. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, there must be “a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicants’ disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

The 35 U.S.C. § 103(a) obviousness rejections of claims 21 and 22 are improper because the elements for a *prima facie* case of obviousness are not met. Specifically, the rejection fails to meet the criterion that the prior art reference must teach or suggest all the claims limitations. Regarding independent claim 21 and claim 22 depending therefrom, Applicant’s independent claim 21 includes claim limitations not taught or suggested in the cited references.

Generally, Applicant’s invention recites “determining” and “adjusting” “an initial call request block probability” **all at the same entity**, namely at the “apparatus.” Specifically, Applicant’s independent claim 21 recites, *inter alia*, “determining at the mobile station an

elapsed time from an effective time of said initial call request block probability, wherein the block probability is determined by a network element and *adjusting at the mobile station* said initial call request block probability *based on said elapsed time determined within the mobile station*, said adjusted call request block probability identifying when the mobile station blocks a call request by foregoing origination of the call request.”

Applicant herein sustains the above-proffered arguments that Redden, Siwko and Bhatia, either individually or in any proper combination, do not teach or suggest all of Applicant’s claim elements and therefore **cannot** render Applicant’s claimed invention obvious under 35 U.S.C. § 103. Accordingly, the rejection of claim 21 must be withdrawn. Therefore, since Redden, Siwko and Bhatia, either individually or in any proper combination do not teach or suggest all of Applicant’s claim elements, these references **cannot** render obvious, under 35 U.S.C. §103, Applicant’s invention as presently claimed in Applicant’s independent claim 21 which each recites, *inter alia*, “determining at the mobile station an elapsed time from an effective time of said initial call request block probability, wherein the block probability is determined by a network element and *adjusting at the mobile station* said initial call request block probability *based on said elapsed time determined within the mobile station*, said adjusted call request block probability identifying when the mobile station blocks a call request by foregoing origination of the call request.” Accordingly, Applicant respectfully requests the rejection of independent claim 21 be withdrawn.

The nonobviousness of independent claim 21 precludes rejection of claim 22 which depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. See *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), see also MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 21 and claim 22 which depends therefrom.

#### **Allowable Subject Matter**

Claim 23 is allowable.

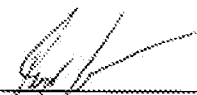
Applicant acknowledges this indication with appreciation.

**CONCLUSION**

Claims 1-25 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicant's undersigned representative.

Respectfully submitted,

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By:   
Rupit Patel, Reg. No. 53,441  
(858) 651-7435

QUALCOMM Incorporated  
5775 Morehouse Drive  
San Diego, California 92121  
Telephone: (858) 658-5787  
Facsimile: (858) 658-2502